

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE: **PETITION OF GASCO DISTRIBUTION SYSTEMS, INC. TO APPROVE  
BYRDSTOWN, TENNESSEE FRANCHISE**

Docket No. 01-40113

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**PETITION OF GASCO DISTRIBUTION SYSTEMS, INC.  
TO APPROVE BYRDSTOWN, TENNESSEE FRANCHISE**

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Gasco Distribution Systems, Inc. ("Gasco") and the Town of Byrdstown, Tennessee ("Byrdstown") petition the Tennessee Regulatory Authority ("TRA") to approve, pursuant to T.C.A. § 65-4-107, the Byrdstown Natural Gas Franchise Ordinance of 2000 (the "Ordinance," copy attached) issued by Byrdstown, to Gasco on October \_\_\_, 2000.

The Ordinance describes the terms of Gasco's franchise in Byrdstown, Tennessee. The agreement also includes the payment of up to 2% franchise fee, as described in Section 13 of the Ordinance. The fee will be added as a separate, line item charge on each customer's bill as required by T.C.A. § 65-4-105(c). This franchise agreement will bring gas service to areas where no such service is presently available. Both Gasco and Byrdstown believe that approval of this franchise will serve the public interest by bringing gas service, new industry, and jobs to Byrdstown.

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For these reasons, Gasco and Byrdstown submit that approval of this franchise is "necessary and proper for the public convenience and properly conserves the public interest," as provided in § 65-4-107, and therefore asks that the franchise be approved.

Respectfully submitted,

*Henry Walker* by *W.M. w/*

*permission*  
Henry Walker, Esq.  
Boult, Cummings, Conners & Berry, PLC  
414 Union Street, Suite 1600  
P. O. Box 198062  
Nashville, Tennessee 37219

*Counsel for Gasco Distribution Systems, Inc.*

*Phillip M. Smalling*

Phillip M. Smalling  
Hassler & Smalling  
West Main  
Byrdstown, TN 38549

*Counsel for Town of Byrdstown*

O R D I N A N C E

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AN ORDINANCE GRANTING A FRANCHISE TO **GASCO DISTRIBUTION SYSTEMS, INC.**, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A GAS SYSTEM IN THE TOWN OF BYRDSTOWN, TENNESSEE. INCLUDING A SYSTEM OF GAS MAINS AND SERVICE PIPES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND OTHER PUBLIC GROUND OF THE TOWN OF BYRDSTOWN, TENNESSEE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF BYRDSTOWN, TENNESSEE, as follows:

SECTION 1. This Ordinance shall be known and may be cited as the "BYRDSTOWN NATURAL GAS FRANCHISE ORDINANCE OF 2000".

SECTION 2. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present terms include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "TOWN" is the Town of Byrdstown, Tennessee, a municipal corporation;

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- (2) "COMPANY" is Gasco Distribution Systems, Inc., the grantee of the rights under this franchise, a corporation, domesticated for the purpose of doing business within the State of Ohio, with its principal place of business at 4435 East Pike, Zanesville, Ohio 43701.
- (3) "PERSON" is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. There is hereby granted by the Town of Byrdstown, Tennessee, to Gasco Distribution Systems, Inc., its successors and assigns, the exclusive right, authority, privilege and franchise to erect, construct, operate and maintain a system of gas mains, service pipes, regulator all other necessary and appropriate equipment and facilities for the transmission and distribution of gas in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future corporation limits of the Town of Byrdstown and in the environs of said Town, and to import, transport, sell and distribute gas, whether natural, manufactured, or mixed, within the Town and its environs, for the supplying and selling of said gas to said Town, and the inhabitants, institutions, and businesses thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary gas mains, service pipes and other appliances, fixtures, and facilities as may be necessary for said

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purposes, to-wit: the transmission, distribution and sale of such gas to said Town and the inhabitants thereof, for domestic, commercial, industrial and institutional uses, and such other purposes for which it is or may hereafter be used.

SECTION 4. This franchise and the rights herein granted shall take effect and be enforced from and after the effective date hereof, as required by law, and upon the filing of acceptance by the Company and approval by the TRA, and shall continue in force and effect for a term of twenty (20) years after the effective date. The franchise shall automatically continue for consecutive twenty (20) year terms unless terminated by either the Town or the Company pursuant to this Section. The Company has the right to terminate the franchise effective at the end of any term by providing written notice to the Town at least one (1) year prior to the end of that term. The Town has the right to terminate the franchise only for "Just Cause", at the end of any term by providing written notice to the Company at least one (1) year prior to the end of that term, specifying the reasons constituting "Just Cause". For purposes of this Section 4, "Just Cause" shall mean the Company's material failure to: (i) provide a safe and adequate service to its customers in the Town; or (ii) the Company's failure to comply with the terms of this ordinance. Company has the right to contest the determination of "Just Cause" before any legal forum having jurisdiction. If contested, the determination shall not take effect until approved by a legal forum having jurisdiction.

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SECTION 5. All gas mains, service pipes, fixtures, facilities and other appliances laid, constructed, maintained and operated by virtue of this franchise shall be laid, constructed, maintained and operated in accordance with acceptable engineering practices and in full accord with any and all applicable engineering codes and safety codes adopted or approved by the natural gas distribution industry and/or engineering profession and in accordance with any applicable Statutes of the State of Tennessee, Ordinances of the Town of Byrdstown and the Rules and Regulations of the Tennessee Regulatory Authority or any other governmental regulatory commission, board or agency having jurisdiction over the Company. Said facilities shall be so construed as not to interfere with the drainage of said Town, or interfere with or injure any street, sewer or other public improvement which said Town has heretofore made or may hereafter make in, upon, across, along or under any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public grounds, or unnecessarily obstruct or impede such highway, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds of said Town. Company shall provide detailed maps, descriptions or other documents necessary for the Town officials to locate and/or be aware of the location of all gas lines, equipment and distribution system facilities.

SECTION 6. When the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways or other

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public grounds are opened or any other opening is made by the Company within the Town, whether the same be made for the purpose of laying, constructing, replacing or repairing the mains, pipes and other appliances and fixtures of said Company, said Company shall place and maintain all necessary safety devices, barriers, lights and warnings to properly notify all persons of any dangers resulting from such entrances, and shall comply with all safety regulations required by federal, state or local laws.

SECTION 7. In the event that any time during the period of this franchise the Town shall lawfully elect to alter, or change the grade of, any street, alley or other public ways in which the Company is maintaining gas mains, pipes or other appliances and fixtures, the Company, upon reasonable written notice by the Town, shall remove, or change or relocate its mains, pipes, or other appliances and fixtures as necessary to conform to the proposed alteration. However, the Company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a Federal or State statute, for either urban renewal development or street relocation.

SECTION 8. When any highway, street, avenue, road, alley, lane, way, utility easement, parkway or other public ground is entered by the Company, the Company shall, within a reasonable time, restore the same to its former condition as nearly as practicable in such a manner as to meet the approval of the Town's

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Consulting Engineer, Codes Inspector, or other responsible agent of the Town, provided, however, that such approval shall not be unreasonably withheld. In the event the Company shall fail to restore said streets, avenues, roads, alleys, lanes, ways, utility easements, parkways, or other public grounds to their former state, as nearly as practicable, the Town may itself, after giving the Company reasonable written notice, make restoration and charge the costs thereof to the Company.

SECTION 9. The Company shall, at all times, defend, indemnify and hold the Town and its Mayor, Recorder and Board of Aldermen, in their official and individual capacities, harmless from and against any and all claims for injury to any person or property by reason of the failure of the Company or its employees to exercise due care and diligence in and about the installing and maintenance of said system, guarding trenches and excavations while said system is being installed or subsequent extensions, repairs, or alterations are being made or generally in the day to day operation and maintenance of said system, provided the Company shall have been notified in writing of any claim against the Town on account thereof, and shall have been afforded the opportunity fully to defend the same. Company further agrees that it will maintain liability insurance coverage in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS for personal injuries and not less than FIVE MILLION (\$5,000,000.00) DOLLARS for property damage. Company shall provide verification of such insurance coverages upon

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request. The indemnification of Town and its officers by the Company for any claims, demands, suits, actions or judgments related to installation, maintenance or day to day operation of the utility system shall also include any reasonable attorneys fees and direct costs incurred by Town.

SECTION 10. The Town and the Company hereby agree that this Ordinance shall, from time to time, be subject to Rules and Regulations adopted by the Company and approved by the Tennessee Regulatory Authority or any other regulatory body having jurisdiction thereof during the term of this franchise, and shall also be subject to all Rules and Regulations adopted and approved by the Tennessee Regulatory Authority itself; and that all such Rules and Regulations shall be and become part of this Ordinance to the same extent and with the same effect as if said Rules and Regulations were herein set forth in full. The Company shall not be obligated or required to make any extension of distribution mains, except in accordance with the provisions relating thereto adopted or approved by the Tennessee Regulatory Authority.

SECTION 11. Nothing contained herein shall be construed as preventing the Company from installing, placing, replacing, taking up, repairing or removing gas pipes, mains, service pipes or other devices for furnishing gas service, from using any easements for gas service which are shown on any plat or plats or any portion of the Town heretofore or hereafter platted or

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recorded, or any easement which may hereafter be created, granted or dedicated for any such utility purposes by any person, firm or corporation whatsoever.

SECTION 12. The Company shall not assign, sell or transfer the rights granted by this Ordinance without the approval of the Tennessee Regulatory Authority. Even if granted, no sale or transfer of the gas plant or system, or the transfer or any rights under this franchise shall be effective until the vendee, assignee or lessee has filed in the Office of the Town Recorder as instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise, and agreeing to perform all the conditions thereof.

SECTION 13. Subject to approval by the Tennessee Regulatory Authority, the Town shall bill a surcharge up to two percent (2%) of the natural gas sales exclusive of taxes and other charges from any customer of Gasco Distribution Systems, Inc. located within the franchise area granted by the Town. The Company shall include said surcharge as a separate item on its bills to its customers in the Town and shall pay said amount received from its customers to the Town within twenty-one (21) days after receipt. Interest on any unpaid amounts due will accrue after the due date at the rate of eight percent (8%). The Town shall be permitted to audit or inspect records of Company for compliance with this provision or any other provision of this franchise document.

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SECTION 14. The Company and Town acknowledge that the franchise can be terminated by the Town for the following reasons:

- a. The Company fails to comply with any term or condition of the Ordinance and fails to cure the failure within ninety (90) days, after notice of the failure.
- b. The Company fails to remit franchise fees collected from customers for a period of ninety (90) days.
- c. The Company fails to use reasonable diligence in making natural gas available to all residents of the Town. Reasonable diligence requires availability to at least sixty percent (60%) of the Town residents within twenty-four (24) months of the granting of this franchise. Reasonable diligence requires availability to ninety percent (90%) of the Town residents within forty-eight (48) months of granting the franchise, and availability to one-hundred percent (100%) of the Town's residents within seventy-two (72) months. For purposes of this section, Town shall mean the political boundaries of the Town on the date of the enactment of this Ordinance.
- d. Ninety (90) days after written notice the Company fails to timely pay real estate and personal property taxes assessed by the Town or Pickett County. Provided, however, no special tax or tax rate shall be imposed upon the Company by the Town. To the extent permitted by law, the Company shall not be assessed any taxes for improvements until they are placed into service.
- e. The Company ceases to operate the utility for more than ninety (90) continuous days or ceases to operate the system in a manner that provides residents with a reliable source of natural gas and fails to cure the failure within ninety (90) days after written notice.

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- f. The Company voluntarily ceases service to the Town without TRA approval.

SECTION 15. In the event Company ceases to operate the utility for more than ninety (90) continuous days or in the event the authority to operate the utility is revoked or terminated by the Tennessee Regulatory Authority or in the event the franchise is terminated by the Town, then and in that event, the Company shall have the option, but not the obligation to ~~re~~convey the natural gas system to the Town for the Fair Market Value of the system as determined by the American Arbitration Association. The Town shall have ninety (90) days to accept or reject the conveyance of the system for fair market value.

SECTION 16. If any section or portion of any section of this Ordinance shall hereafter be declared or determined by a court of competent jurisdiction to be invalid, the Company, at its election (to be given to the Town by notice in writing within thirty (30) days after any such declaration or determination) may ratify or confirm the remaining portions of this Ordinance and upon such ratification or confirmation the remaining portions of this Ordinance shall remain in full force and effect.

SECTION 17. The Company shall, within thirty (30) days after the passage of this Ordinance, file with the Town Recorder of

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the Town of Byrdstown its unconditional acceptance of the terms and conditions of this Ordinance signed by its President and, after the filing of such acceptance, this Ordinance shall constitute a contract between the parties hereto and shall (subject to the rights and powers vested in and Orders lawfully issued by the Tennessee Regulatory Authority or such other regulatory body of the State of Tennessee as may hereafter succeed to the rights and powers of the Tennessee Regulatory Authority) be the measure of the rights, powers, obligations, privileges and liabilities of the Town and of the Company.

SECTION 18. All the privileges given and obligations created by this Ordinance shall be binding upon the successors and assigns of the Company subject to the provisions of Section 12 on assignments.

SECTION 19. Company shall be responsible for obtaining all necessary approvals for the operation of the gas utility from the Tennessee Regulatory Authority or any other regulatory agency. Town agrees to cooperate to the extent reasonable and necessary for obtaining same.

SECTION 20. In the event this franchise terminates for just cause, Company shall remove all lines, equipment or distribution system existing on or in Town owned properties and rights-of-way if required to do so by the Town. The Company shall

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be permitted one-hundred and twenty (120) days to perform removal. In the event removal does not occur, any lines, equipment or system will be considered to be abandoned.

SECTION 21. All notices required hereunder shall be delivered or mailed to the following official addresses:

GASCO DISTRIBUTION SYSTEMS, INC.  
4435 EAST PIKE  
ZANESVILLE, OHIO 43701

TOWN OF BYRDSTOWN  
ATTN: MAYOR AND ALDERMEN  
P.O BOX 325  
109 WEST MAIN STREET  
BYRDSTOWN, TENNESSEE 38549

SECTION 22. This Ordinance is subject to the approval of the Tennessee Regulatory Authority. This franchise shall take effect immediately, the public welfare so requiring it.

TOWN OF BYRDSTOWN, TENNESSEE

BY: Paul Jordan, Mayor  
PAUL JORDAN, MAYOR

ATTEST:

Glen Pennis

TOWN RECORDER

Passed First Reading: 10-30-00

Passed Second Reading: 11-13-00

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